



Senate

General Assembly

File No. 353

February Session, 2022

Senate Bill No. 353

Senate, April 6, 2022

The Committee on Commerce reported through SEN. HARTLEY of the 15th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT'S RECOMMENDATIONS REGARDING DIGITAL ASSETS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) As used in this section and
2 sections 2 to 4, inclusive, of this act:

3 (1) "Digital asset" means a representation of economic, proprietary or
4 access rights that is stored in a computer readable format, including, but
5 not limited to, digital consumer assets, digital securities and virtual
6 currencies;

7 (2) "Digital consumer asset" means a digital asset that is used or
8 bought primarily for consumptive, personal or household purposes,
9 including, but not limited to, (A) an open blockchain token constituting
10 intangible property as otherwise provided by law, and (B) any other
11 digital asset that is not a digital security or virtual currency. "Digital
12 consumer asset" shall not be construed to include digital securities or

13 virtual currencies;

14 (3) "Digital security" means a digital asset that is a security, as defined
15 in subsection (a) of section 42a-8-102 of the general statutes. "Digital
16 security" shall not be construed to include digital consumer assets or
17 virtual currencies; and

18 (4) "Virtual currency" has the same meaning as provided in section
19 36a-596 of the general statutes. "Virtual currency" shall not be construed
20 to include digital consumer assets or digital securities.

21 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) Digital assets shall be
22 classified in the following manner:

23 (1) A digital consumer asset is intangible personal property and shall
24 be considered a general intangible, as defined in section 42a-9-102 of the
25 general statutes only for the purposes of article 9 of title 42a of the
26 general statutes;

27 (2) A digital security is intangible personal property and shall be
28 considered a security, as defined in subsection (a) of section 42a-8-102
29 of the general statutes, and investment property, as defined in
30 subsection (a) of section 42a-9-102 of the general statutes, only for the
31 purposes of articles 8 and 9 of title 42a of the general statutes; and

32 (3) Notwithstanding the definition of money contained in subsection
33 (b) of section 42a-1-201 of the general statutes, virtual currency is
34 intangible personal property and shall be considered money only for the
35 purposes of article 9 of title 42a of the general statutes.

36 (b) A digital asset may be treated as a financial asset, as defined in
37 subsection (a) of section 42a-8-102 of the general statutes, pursuant to a
38 written agreement with the owner of the digital asset. If treated as a
39 financial asset pursuant to a written agreement with the owner of the
40 digital asset, the digital asset shall remain intangible personal property.

41 (c) Classification of digital assets under this section shall be construed
42 in a manner to give the greatest effect to section 1 of this act, this section,

43 and section 3 of this act, but shall not be construed to apply to any asset
44 other than a digital asset.

45 Sec. 3. (NEW) (*Effective July 1, 2022*) (a) As used in this section:

46 (1) "Control" means that a secured party or an agent, fiduciary or
47 trustee of such party has the exclusive legal authority to conduct a
48 transaction relating to a digital asset, including by means of a private
49 key or the use of a multi-signature arrangement authorized by the
50 secured party. "Control" shall be construed as equivalent to "possession"
51 when possession is used in article 9 of title 42a of the general statutes.
52 "Control" shall not be construed to require physical possession;

53 (2) "Multi-signature arrangement" means a system of access control
54 relating to a digital asset for the purposes of preventing unauthorized
55 transactions relating to such asset in which two or more private keys are
56 required to conduct a transaction, or any substantially similar analogue;
57 and

58 (3) "Private key" means a unique element of cryptographic data, or
59 any substantially similar analogue, that is (A) held by a person, (B)
60 paired with a unique, publicly available element of cryptographic data,
61 and (C) associated with an algorithm that is necessary to carry out an
62 encryption or decryption required to execute a transaction.

63 (b) Notwithstanding the provisions of subsection (a) of section 42a-9-
64 310 of the general statutes, as amended by this act, perfection of a
65 security interest in a digital asset may be achieved through control. A
66 security interest held by a secured party having control of a digital asset
67 shall have priority over a security interest held by a secured party that
68 does not have control of such asset.

69 (c) Before a secured party may take control of a digital asset pursuant
70 to this section, such party shall enter into a control agreement with the
71 debtor. Such control agreement may set forth the terms under which a
72 secured party may pledge its security interest in the digital asset as
73 collateral for another transaction.

74 (d) A secured party may file a financing statement with the Secretary
75 of the State to perfect a security interest in proceeds from a digital asset
76 pursuant to subsection (d) of section 42a-9-315 of the general statutes.

77 (e) Notwithstanding the provisions of article 9 of title 42a of the
78 general statutes, a transferee shall take a digital asset free of any security
79 interest not earlier than two years after such transferee takes such asset
80 for value and does not have actual notice of an adverse claim to such
81 asset. This subsection shall only apply to a security interest perfected by
82 a method other than control.

83 (f) Perfection of a digital asset by control shall create a possessory
84 security interest in the digital asset and shall not require physical
85 possession of the digital asset. For the purposes of article 9 of title 42a of
86 the general statutes, a digital asset is located in the state if the debtor or
87 secured party is (1) physically located in the state, or (2) incorporated or
88 organized in the state.

89 Sec. 4. (NEW) (*Effective July 1, 2022*) The Superior Court shall have
90 jurisdiction of any suit, action or proceeding relating to digital assets,
91 including any such suit, action or proceeding arising from sections 2 and
92 3 of this act or title 42a of the general statutes.

93 Sec. 5. Subsections (a) and (b) of section 42a-9-310 of the general
94 statutes are repealed and the following is substituted in lieu thereof
95 (*Effective July 1, 2022*):

96 (a) Except as otherwise provided in subsection (b) of this section and
97 subsection (b) of section 42a-9-312, a financing statement must be filed
98 to perfect all security interests and agricultural liens.

99 (b) The filing of a financing statement is not necessary to perfect a
100 security interest:

101 (1) That is perfected under subsection (d), (e), (f) or (g) of section 42a-
102 9-308;

103 (2) That is perfected under section 42a-9-309 when it attaches;

- 104 (3) In property subject to a statute, regulation or treaty described in
 105 subsection (a) of section 42a-9-311;
- 106 (4) In goods in possession of a bailee which is perfected under
 107 subdivision (1) or (2) of subsection (d) of section 42a-9-312;
- 108 (5) In certificated securities, documents, goods or instruments which
 109 is perfected without filing, control or possession under subsection (e),
 110 (f) or (g) of section 42a-9-312;
- 111 (6) In collateral in the secured [party's] party's possession under
 112 section 42a-9-313;
- 113 (7) In a certificated security which is perfected by delivery of the
 114 security certificate to the secured party under section 42a-9-313;
- 115 (8) In deposit accounts, electronic chattel paper, electronic
 116 documents, investment property or letter-of-credit rights which is
 117 perfected by control under section 42a-9-314;
- 118 (9) In proceeds which is perfected under section 42a-9-315; [or]
- 119 (10) That is perfected under section 42a-9-316; or
- 120 (11) That is perfected under section 3 of this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section
Sec. 4	<i>July 1, 2022</i>	New section
Sec. 5	<i>July 1, 2022</i>	42a-9-310(a) and (b)

CE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Secretary of the State	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill allows a secured party to perfect its security interest in proceeds from a digital asset by filing a financing statement with the Secretary of the State and results in a potential revenue gain. The current fee for filing a financing statement is \$50. Any revenue gain associated with the bill will vary based off the number of financing statements filed.

The bill is not anticipated to have an impact on state tax revenue as the bill does not address the taxability of digital assets.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of financing statements filed.

OLR Bill Analysis**SB 353*****AN ACT CONCERNING THE DEPARTMENT OF ECONOMIC AND
COMMUNITY DEVELOPMENT'S RECOMMENDATIONS
REGARDING DIGITAL ASSETS.*****SUMMARY**

This bill establishes a set of commercial laws that apply to “digital assets.” It specifically subjects digital assets to selected provisions of Articles 8 and 9 of the Uniform Commercial Code (UCC), but in some instances it applies UCC provisions to them in a way that differs from the code’s typical application (e.g., “take free” rules and choice of law).

Under the bill, a digital asset is a representation of economic, proprietary, or access rights that is stored in a computer readable format, including digital consumer assets, digital securities, and virtual currencies. The bill classifies digital assets and these three subcategories using existing UCC categories (e.g., money). Among other things, it also establishes provisions for the following:

1. perfecting a security interest in a digital asset, including through “control” (i.e., establishing priority over other security interests);
2. perfecting a security interest in proceeds from a digital asset;
3. taking a digital asset free of a security interest; and
4. choice of law (i.e., which jurisdiction’s laws apply to a dispute).

EFFECTIVE DATE: July 1, 2022

DIGITAL ASSET CLASSIFICATION

As described below, the bill establishes three specific subcategories of digital assets, each of which is mutually exclusive (e.g., virtual

currency cannot also be a digital consumer asset or a digital security). (It is unclear whether digital assets may also include other assets not in these categories.) The bill (1) deems assets in each of these subcategories to be intangible personal property and (2) provides that its digital asset classifications must be construed to give the greatest effect to the bill's provisions, but cannot be construed to apply to any other asset.

Digital Consumer Assets

Under the bill, a digital consumer asset is a digital asset used or bought primarily for consumptive, personal, or household purposes. It includes (1) an open blockchain token constituting intangible property and (2) any other digital asset that is not a digital security or virtual currency.

The bill deems digital consumer assets to be general intangibles for purposes of UCC Article 9. With respect to general intangibles, generally Article 9 allows entities to grant a security interest in the intangible and establishes restrictions on assignment. (It also limits a transferee's ability to take a general intangible free of a perfected security interest. But, as described below, the bill establishes take-free provisions that differ from those in Article 9.)

Digital Security

Under the bill, a digital security is a digital asset that is a security, as defined in UCC Article 8. Generally, this means an obligation of an issuer or a share, participation, or other interest in an issuer, or in property or an enterprise of an issuer, that meets the following criteria:

1. is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by, or on behalf of, the issuer;
2. is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
3. (a) is, or is of a type, dealt in or traded on securities exchanges or securities market or (b) a medium for investment with terms that

expressly provide that it is a security governed by Article 8.

The bill deems digital securities to be securities for purposes of Article 8 and investment property for purposes of Article 9. Generally, Article 8 governs the ownership and transfer of securities (e.g., settling transactions). With respect to investment property, generally Article 9 establishes provisions for acquiring control, perfection, and priority of security interests.

Virtual Currency

By law, with certain exceptions virtual currency is a digital unit (1) used as a medium of exchange or form of digitally stored value or (2) incorporated into payment system technology (see BACKGROUND). The UCC does not currently refer to virtual currency specifically, but it appears to be encompassed by Article 9's definition of "general intangible."

The bill instead deems virtual currency to be money for purposes of Article 9, therefore allowing transferees increased ability to take virtual currency free of a security interest (i.e., through possession). Generally, Article 9 provides that a transferee takes money free of a security interest unless it colluded with the debtor to violate the secured party's rights (CGS § 42a-9-332).

Digital Assets Treated as Financial Assets

Under Article 8, property held by a securities intermediary for another person in a securities account may be treated as a financial asset for Article 8 purposes if the intermediary and other person agree to do so (CGS § 42a-8-102(a)(10)(C)).

The bill specifically allows a digital asset to be treated as a financial asset through a written agreement with the digital asset's owner, in which case it remains intangible personal property. Generally, Article 8 establishes provisions on the acquisition of financial assets, these assets' relationship to security entitlements, and entitlement holders' property interest in these assets.

PERFECTING SECURITY INTERESTS

Perfection Through Control

Under the UCC, a perfected security interest is an attached security interest that will generally prevail over a creditor that is using the courts to obtain a lien on the collateral. Depending on the type of collateral, a security interest is perfected under Article 9 (1) when a secured party files a financing statement in the appropriate office (e.g., the secretary of the state), (2) when a secured party takes possession or control of the collateral, or (3) automatically on attachment. With certain exceptions, priority is established by time of filing or perfection.

The bill instead allows a security interest in a digital asset to be perfected through control (which includes an agreement). It provides that an interest perfected this way has priority over a security interest held by a secured party that does not have control of the asset (e.g., a party that perfected its interest in the asset by filing a financing statement).

Under the bill, a secured party must enter into a control agreement with the debtor before taking control of a digital asset. The agreement may include terms for a secured party to pledge its security interest as collateral for another transaction. The bill provides that perfection by control creates a possessory security interest in the digital asset, but does not require physical possession of it.

Under the bill, “control” means that a secured party or its agent, fiduciary, or trustee has the exclusive legal authority to conduct a transaction relating to a digital asset, including by using a private key or multi-signature arrangement. The bill deems control as being equivalent to “possession” when the latter term is used in Article 9, but it specifies that control does not require physical possession.

The bill defines “multi-signature arrangement” as a system of access control relating to a digital asset to prevent unauthorized transactions. It requires at least two private keys or a substantially similar analogue. A “private key” is a unique element of cryptographic data, or any

substantially similar analogue, that is held by a person; paired with a unique, publicly available cryptographic data element; and associated with an algorithm necessary to carry out an encryption or decryption to execute a transaction.

Security Interest in Proceeds

The bill allows a secured party to perfect a security interest in proceeds from a digital asset by filing a financing statement with the secretary of the state. Under Article 9, proceeds are, among other things, whatever is received on the sale, exchange, collection, or other disposition of collateral. Generally, Article 9 provides that a security interest in proceeds becomes unperfected on the 21st day after the interest attaches to the proceeds unless certain conditions are met (e.g., the secured party files a financing statement) (CGS § 42a-9-315(d)).

“Take Free” Provisions

Article 9 contains several provisions specifying when a transferee may take an asset free of a security interest (i.e., “take free” provisions). These provisions vary based on the type of asset (e.g., money or a general intangible) and security interest (e.g., perfected or unperfected).

For security interests perfected through a method other than control, the bill instead allows a transferee to take a digital asset free of any security interest beginning two years after the transferee takes the asset for value and does not have actual notice of an adverse claim.

Choice of Law

For multi-state transactions (e.g., transactions where the parties are in different states), generally Article 9 provides that the applicable governing law to the security interest (e.g., for disputes about perfection and priority) is the law of the jurisdiction where the debtor is located.

The bill instead provides that, for Article 9 purposes, a digital asset is located in Connecticut if the debtor or secured party is physically located in the state or is incorporated or organized here. It grants the Superior Court jurisdiction of any suit, action, or proceeding relating to digital assets, including those arising from the bill’s provisions or the

UCC.

BACKGROUND

Related Bill

sHB 5320, reported favorably by the Banking Committee, requires persons conducting virtual currency business activity (e.g., receiving, storing, holding, buying, selling, issuing, or exchanging virtual currency) to register with the Department of Banking, for a fee the banking commissioner sets.

Virtual Currency

By law, virtual currency is a digital unit (1) used as a medium of exchange or form of digitally stored value or (2) incorporated into payment system technology. It includes digital units of exchange that (1) have a centralized repository or administrator, (2) are decentralized without a centralized repository or administrator, or (3) may be created or obtained by computing or manufacturing effort.

Virtual currency does not include digital units used in the following manner:

1. solely in online gaming platforms with no other market or application or
2. exclusively in a consumer affinity or rewards program that (a) can be used only as payment for purchases with the issuer or another designated merchant and (b) cannot be converted into, or redeemed for, fiat currency (government-backed currency, such as the U.S. dollar) (CGS § 36a-596).

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 21 Nay 1 (03/22/2022)